



CITY OF LODI

COUNCIL

COMMUNICATION

AGENDA TITLE: NATURAL GAS PROCUREMENT PROGRAM THIRD-PHASE AGREEMENT

MEETING DATE: NOVEMBER 6, 1991

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: Approve the Natural Gas Procurement Program Third-Phase Agreement and authorize the City Manager and City Clerk to execute the Agreement.

BACKGROUND INFORMATION: Lodi, as a participant in the NCPA Combustion Turbine Project, looks to NCPA to obtain the most economical fuel supply. WCPA and participants have concluded that economic benefits can be obtained by procuring contract and other rights to and for the transportation, storage and supply of natural gas for the participants' needs. The purpose of this Agreement is to assemble an integrated bundle of rights to a natural gas supply useful to NCPA and the participants.


Participation percentages for the participants are established in the Agreement. A participant may sell, transfer or assign all or any part of its participation percentage of the project with written consent of the NCPA Commission.

Approval of the above-mentioned Agreement pursuant to the attached Resolution will ensure proper execution of the necessary documents for timely participation in the benefits of an integrated fuel supply.

FUNDING: Not Applicable


Henry J. Rice
Electric Utility Director

APPROVED: _____


THOMAS A. PETERSON
City Manager



NCPA A Public Agency

Northern California Power Agency

180 Ckby Way, Roseville California 95678

MICHAEL W. McDONALD

General Manager

(916) 781-4202

October 18, 1991

RECEIVED
OCT 21 AM 9 46
ALICE M. KERRICHE
CITY CLERK
CITY OF LODI

TO: Natural Gas Procurement Project Participants
FROM: Gail Sipple
SUBJECT: Third Phase Agreement

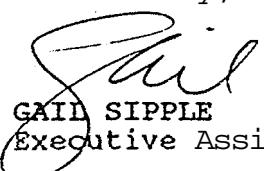
Attached is a copy of the Project's Third Phase Agreement for submittal to your governing body for approval. Also attached is a form of resolution for your use.

Upon approval, please return to me one executed copy of the Agreement **and** supporting resolution.

By copy of this Letter I am also sending these documents to your City Clerk for processing.

If you have any questions, please contact me.

Yours truly,


GAIL SIPPLE
Executive Assistant

Attachments

11/6 FU

RESOLUTION NO. 91-203

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING EXECUTION OF NATURAL GAS
PROCUREMENT THIRD PHASE AGREEMENT

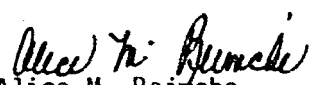
BE IT HEREBY RESOLVED as follows:

The Natural Gas Procurement Program Third Phase Agreement is hereby approved and the Lodi City Manager and City Clerk are hereby authorized and directed on behalf of this Participant to execute such agreement.

Dated: November 6, 1991

I hereby certify that Resolution No. 91-203 was passed and adopted by the Lodi City Council in a regular meeting held November 6, 1991 by the following vote:

- Ayes : Council Members - Pennino, Pinkerton, Sieglock, Snider and Hinchman (Mayor)
- Noes : Council Members - None
- Absent: Council Members - None


Alice M. Reimche
City Clerk

NATURAL GAS PROCUREMENT PROGRAM
THIRD PHASE AGREEMENT

This Agreement, dated as of November 6, 1991, 1991, by and among the Northern California Power Agency, a joint powers agency of the State of California (NCPA) and the members of NCPA which have executed this Agreement (Participant or Participants), is entered into on the basis of the following

RECITALS:

A. On **March** 28, 1991, the NCPA Commission adopted Resolution No. **SI-09**, approving the Natural Gas Procurement Program Service Schedule (Service Schedule).

B. **NCPA** and certain of its members **have** determined that procuring contract and other rights to and for the transportation, storage, and supply of natural gas for **use** in **NCPA** projects, **and** for the needs of members for their own use **as** fuel or for resale, is in the best interests of NCPA and its members.

C This Agreement is the Third Phase Agreement contemplated in the Service Schedule. **The** primary purpose of this Agreement is to assemble **an** integrated bundle of rights to a natural gas **supply** useful to NCPA and the Partidpants.

NOW THEREFORE, NCPA and the ~~Participants~~ hereby enter into this

AGREEMENT

Section 1. Service Scheduie. This Agreement supersedes the Service Schedule.

Section 2. Assignment to Participants. The Participants in the Combustion Turbine Project and the members who executed and delivered the Service Schedule hereby assign all of their right, title and interest in their obligations and entitlements under the Service Schedule to the Participants to

EXECUTION COUNTERPART

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this Agreement and the Participants do hereby accept such obligations and entitlements.

Section 3. Participation Percentages. The Participation Percentages of the Participants are shown in Appendix A, attached to and incorporated into this Agreement. The Participation Percentage for each Participant shall be the percentage set forth opposite the name of such Participant in Appendix A, as **such** appendix may be **amended** from time to time in accordance with this Agreement.

Section 4. Authority of General Manager.

4.1 The General Manager is hereby authorized, on behalf of the Participants, to enter into contracts and to take other actions, including but not limited to the acquisition of real and personal property, the expenditure **of** NCPA staff resources, **and** the retention of expert consultants to obtain **rights** to the transportation, storage, and supply of natural gas (Project); provided that expenditures **resulting** from such contracts *or* actions must be in accordance with the Project Budget provided for in this Agreement.

4.2 The General Manager shall present each contract **which** would encumber more **than** \$15,000 in a fiscal year to the NCPA Commission for its approval or disapproval prior to the effective date or the date of rescission of each contract.

4.3 **The** General Manager shall exercise the authority delegated by this Agreement to promote economy by assembling **an** integrated bundle of natural gas rights for electric power production or **other** uses or purposes and, because of efficiencies resulting from the assembled rights for all Participants, for resale by the Participants which have exercised their powers to furnish natural gas for resale.

Section 5. Project Availability. NCPA shall make available or cause to be made available, and sell to each Participant, and each Participant shall be

entitled to receive, and shall purchase from NCPA, such Participant's Participation Percentage of the Project.

Section 6. Rates and Charges. NCPA shall fix rates and charges to the Partidpants, on a fixed and variable basis, to produce revenues to NCPA from the Project at least equal to the amounts needed by NCPA to meet the total costs of NCPA to provide the Project. Each Participant hereby directs NCPA to assess the rates and charges in a manner which facilitates collection, such as a cost of fuel for the NCPA projects ~~which~~ consume or will consume natural gas, ~~and~~ charge back ~~such~~ rates ~~and~~ charges through the ~~third~~ phase agreements ~~or~~ facilities agreements for such projects, unless a Participant directs otherwise. ~~The~~ rates and charges shall be uniform for NCPA and Participant projects of similar capaaty factors. NCPA shall review and adjust rates and charges as required.

Section 7. Special Fund Obligation. Each Partidpant shall be obligated to ~~make~~ payments under this Agreement solely from the revenues of, and as an operating ~~expense~~ of, its electric system, or its gas system. However, ~~nothing~~ in this Agreement shall be construed as prohibiting any Participant from using any other funds or revenues for purposes of satisfying any provisions of this Agreement if the Participant chooses to do so.

Section 8. Unconditional Obligation. Each Participant shall make payments under this Agreement whether or not the Roject is available and notwithstanding the suspension, interruption, interference, reduction or curtailment of the Project, in whole or in part, for any reason whatsoever. Such payments are not subject to any reduction, whether by offset or otherwise, and are not conditioned upon performance by NCPA or any other Participant under this Agreement or any other agreement.

Section 9. Severall Obligation. No Partidpant shall be liable under this Agreement for the obligations of any other Participant. Each Participant shall be solely responsible and liable for performance of its obligations under this Agreement and for the maintenance and operation of its respective properties. The obligation of each Partidpant to make payments under this

Agreement is a several obligation and not a joint obligation with those of the other Participants.

Section 10. Rate Obligation. Each Participant covenants and agrees to establish and collect fees and charges for electric **capacity** and energy furnished through facilities of its electric system, or gas furnished through its gas system, sufficient to provide revenues adequate to meet its obligations under this Agreement. The obligation of a Participant to make payments under this **Agreement** shall not constitute a legal or equitable pledge, charge, lien or encumbrance upon any property of the Participant or upon any of its income, receipts or revenues, except the revenues of its electric system or its gas system. Neither the Participant nor the State of **California** or any agency or political subdivision thereof shall ever be obligated or compelled to levy ad valorem taxes to make the payments provided for in this Agreement.

Section 11. Operation and Maintenance Obligation. Each Participant covenants and agrees that it shall, at all times, operate the properties of its electric system or its **gas** system and the businesses in connection therewith in **an** efficient manner and at reasonable cost and shall maintain its electric system or gas system in good repair, working order, **and** condition.

Section 12. Sales of Surpluses. NCPA is authorized and directed to market, lease, rent, sell **and** assign natural gas transportation, storage and **supply rights** of the Project, surplus to the needs of the Participants, to persons or entities **which** are not Participants. NCPA shall endeavor to set rates and charges for such surplus rights at amounts **which** recover the costs of such rights **and** a premium for the risks borne by the Participants. Any premium shall be credited to the accounts of the ~~Participants~~ as they may direct. Short **term** layoffs of rights in the Project, between or among Participants, shall be permitted, for such periods as Participants may agree in a meeting of the NCPA Commission, pursuant to the voting provisions of this Agreement.

Section 13. Participant Direction and Review. NCPA shall comply with all lawful directions of the Participants with respect to this Agreement, while not stayed or nullified, to the fullest extent authorized by **law**. Actions

of the Participants, including giving directions to NCPA, will be taken only at meetings of the NCPA Commission duly called and held pursuant to the open meeting laws.

Section 14. Quorum. A quorum of the NCPA Commission, for purposes of acting upon matters relating to this Agreement, shall consist of Commissioners, or their designated Alternates, representing at least *two* Participants having a combined majority in interest based on Participation Percentages.

section 15. Voting. Each Participant shall have the right to cast one vote with respect to matters pertaining to this Agreement. Actions of the NCPA Commission shall be effective only upon a majority vote, except that upon demand of any Participant, at any meeting of the Commission, the vote on **any issue** relating to this Agreement shall be based upon Participation Percentages. Actions of the Commission shall be effective only upon an ~~affirmative~~ vote of 65% or greater of the Participation Percentages established in this Agreement upon such demand. Any Participant may veto ~~an~~ affirmative action of the Commission relating to this Agreement that was not taken by a 65% or more vote, within 10 days following mailing of notice of ~~such~~ action, by giving written notice of veto to NCPA, unless at a meeting of the Commission called for the purpose of considering the veto, held within 30 days ~~after such~~ veto notice, the holders of 65% or more Participation Percentages shall vote to override the veto. The 65% of the Participation Percentages specified in this Agreement shall be reduced by the amount that the Participation Percentage of any Participant exceeds 35%, but such 65% shall not be reduced below a majority in interest.

Section 16. Budget. Prior to the beginning of each fiscal year for which no budget has been adopted, the NCPA Commission shall adopt, as a part of the regular budget for such fiscal year or years, a budget for the costs of developing and maintaining the Project (Project Budget). The NCPA Commission may adopt budgets for more than one fiscal year. The Project Budget shall authorize the ~~General~~ Manager to make expenditures for

programs in the amounts specified in the Project Budget, subject to the terms and conditions of this Agreement.

Section 17. Lone-Term Transfers. A Participant may not sell, transfer, or assign (transfer) all or any part of its Participation Percentage of the Project without the advance written consent of the NCPA Commission. By written evidence of official action duly and regularly made with all requisite authority, Participants may transfer among themselves their Participation Percentages, after written notice to NCPA and **all** Participants. No long-term transfer, being a transfer for a period longer than prescribed, by the Participants acting through the **NCPA** Commission as provided in section 12 of this Agreement, shall occur without ninety days advance written notice to NCPA or such lesser period of notice as **NCPA** may be able to accept. If the proposed transfer is to *art* entity that is not a Partidpant, all Participants must be given the right of first refusal *in* proportion to their Partidpation Percentages. If the proposed transfer **is** to a person or entity that is not a member of NCPA, all NCPA members shall have the right of first refusal in proportion to the amounts ~~those~~ members contribute to the NCPA general fund. No transfer shall relieve a Participant of its obligations under ~~this~~ Agreement, except that such obligations shall be **discharged** to the extent that NCPA receives payment from the transferee of the transferring Participant's Participation Percentage. Upon the effective date of such transfer, a new service schedule shall be annexed to Appendix **A** to reflect the transferred Participation Percentages.

Section 18. Records and Accounts. NCPA shall keep accurate records and accounts for the Project. **Such** records and accounts shall be made available to any Partidpant for inspection at any reasonable time. *All* records **and** accounts shall be subject to audit at the request of and at the reasonable expense of any Participant.

Section 19. Measurements. NCPA shail establish procedures for the measurement of the quantities of gas transported, stored, and supplied under this Agreement. Such procedures shail provide for maintenance, testing, calibrating, correction, and adjustment-

Section 20. Billing. Monthly billing statements prepared by NCPA shall be sent to each Participant showing the Participant's share of costs and ~~other~~ charges payable pursuant to this Agreement for each billing period. Such statements shall separately set forth any credit or debit adjustments. Amounts shown on each billing statement are due and payable thirty (30) days after the date of the billing statement except that any amount due on a Friday, holiday or weekend may be paid on the closest following workday.

Section 21. Disputes. Any amount due and not paid by a Participant shall bear interest from the due date until **paid** at the annual rate established by the Commission of NCPA at the time of adoption of the then most recent budget. **If** a Participant questions or disputes the correctness of any billing statement by NCPA, it shall pay NCPA the amount claimed when due and shall within ~~thirty~~ (30) days of the receipt of such billing statement request an explanation from NCPA. **If the** bill is determined to be incorrect, NCPA will issue a corrected bill and refund any amount ~~which~~ may be due the Participant, which refund shall **bear** interest from the date NCPA received payment ~~until~~ the date of the refund at an annual rate to be established by the Commission of NCPA at the time of adoption of the then most recent annual budget. **If** NCPA and the Participant fail to agree on the correctness of **a** bill within ~~thirty~~ (30) days after the Participant has requested ~~an~~ explanation, the parties ~~shall~~ promptly submit the dispute to arbitration under section 1280*et seq.* of the Code of Civil Procedure.

Section 22. Obligations in the Event of Default.

22.1 Upon failure of any Participant to make any payment in full when due under this Agreement, NCPA shall make written demand upon such Participant, and if payment is not made within 30 days from the date of such demand, the failure to make payment shall constitute a default.

22.2 Upon the default of any Participant, NCPA (a) may terminate the provisions of this Agreement insofar as the Agreement entitles the defaulting Participant to its Participation Percentage of the Project, and (b)

shall use its best efforts to sell and transfer for the Participant's account all or a portion of the Participant's Participation Percentage of the Project. When making such sales and transfers NCPA shall **allow** all Participants the right of first refusal in proportion to their Participation Percentages **and** shall allow ~~other~~ NCPA members the right of second refusal in proportion to the amount those members contribute to the NCPA general fund.

Notwithstanding **such** sale, transfer or termination, the obligations of the defaulting Participant under this Agreement shall continue in full force and effect except that **such** obligations shall be discharged to the extent that NCPA receives payment from a purchaser or transferee of the defaulting Participant's Participation Percentage in the Project.

22.3 Upon the default of any Participant, and except as transfers **are** made pursuant to subsection 22.2 of this section, (a) the Participation Percentage of each nondefaulting Participant shall be automatically increased for the remaining term of this Agreement **pro** rata with those of the other nondefaulting Participants, **and** (b) the defaulting Participant's Participation Percentage in the Project shall (**but** only for **purposes** of computing the respective Participation Percentages of the nondefaulting Participants) be reduced correspondingly. The fact that other Participants have increased their obligations **to** NCPA according to this subsection shall not relieve the defaulting Participant of its liability under this Agreement, **and** any Participant increasing its obligation shall have a right of recovery from the defaulting Participant to the extent of its increase in obligation.

Section 23. Member Service Agreement. **This** Agreement is a Service Schedule to the Member Service Agreement **and** a **third** phase agreement and shall be deemed incorporated into the Member Service Agreement the Participant has executed or successor agreement to the Member Service Agreement. This Agreement shall be construed as constituting the more specific terms governing the general relationship set out in that Member Service Agreement.

Section 24. Term of Agreement. This Agreement shall become effective on the date the last of the Participants executes and delivers it to

NCPA. This Agreement shall remain in full force and effect until all obligations entered pursuant to it have been extinguished, cancelled, or discharged.

Section 25. Termination. This Agreement may not be cancelled or terminated without the consent of all Participants and NCPA and unless the means have been established to timely pay, extinguish, or discharge, without any liability to NCPA or to any Participant, all obligations entered and liabilities ~~incurred~~ under this Agreement.

Section 26. Notices. **Any** notice, demand or request required or authorized by this Agreement to be given to any Participant or to NCPA shall be given in writing **and** shall either be personally delivered to the Participant or transmitted to the Participant by regular mail at the address designated by the Participant. The designation of such address may be changed at any time by written notice.

Section 27. No Waivers. No waiver of performance under this Agreement shall be effective unless given by the Commission. Any such waiver by the Commission in any particular instance shall not be deemed a waiver with respect to any subsequent performance.

~~Section 28.~~ Uncontrollable Forces. Except with respect to the payment of money, a Participant shall not be considered to be ~~in~~ default of any obligation under this Agreement if prevented from fulfilling such obligation by reason of an uncontrollable force. An uncontrollable force shall include storm, flood, lightning, earthquake, tsunami, explosion, civil disturbance, or similar causes beyond the control of a Participant, which could not reasonably have been avoided by the exercise of due diligence **and** foresight. Any Participant affected by an uncontrollable force shall use due diligence to place itself in a position to fulfill its obligations under this Agreement and such Participant shall exercise such due diligence to remove the effect of the uncontrollable force with reasonable dispatch.

Section 29. Liability. All of the privileges and immunities from liabilities, exemptions from laws, ordinances and rules, all pension, relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents or employees of any public agency which is a Participant, while engaged in the performance of their functions or duties, shall apply to them in the same degree and extent when performing their respective public duties in connection with this Agreement.

Section 30. Indemnity. NCPA and the Participants individually shall indemnify, defend, hold and save each other harmless from **any** and **all** loss or damage **sustained**, **and** from any and **all** liability to any person or property incurred by the other or others, by reason of any act or performance, or failure to act or perform on the part of the indemnifying Participant or its officers, agents, or employees in connection with the Project.

Section 31. Reports. NCPA shall prepare and publish monthly reports regarding the Project in the **ordinary** course of NCPA Commission business.

Section 32. Pledge and Assignment. NCPA **may** pledge and assign this Agreement, with the approval of the NCPA Commission, for the purpose of providing **security** for the performance of contracts **authorized** by the Commission for this Project or for the purpose of *securing* temporary or permanent **financing** for **any** property or facilities or contract rights **which** the NCPA Commission determines are necessary for the Project.

Section 33. Amendments. This Agreement may be amended only by a written **instrument** executed by the Participants and NCPA with the same formality as this Agreement.

Section 34. Severability. In the event that **any** of the terms, covenants or conditions of this Agreement shall be held invalid, NCPA and the Participants intend that all other terms, covenants **and** conditions and their application shall not be affected thereby, but shall remain in force and effect unless a court holds **that** such provisions are not severable from all other provisions of this Agreement.

Section 35. Governing Law. This Agreement shall be interpreted, governed by, and construed under the **laws** of the State of California.

Section 36. Counterparts. This Agreement may be executed in any **number** of counterparts and each executed counterpart shall have the same force and effect as **an original** instrument and as if **all** Participants to all of the counterparts had **signed** the same instrument.

Section 37. Headings. The headings to **the sections** in **this** Agreement are intended for convenience only and not for **the** purpose of interpreting the provisions of this Agreement.

Section 38. Warranty of Authority. **Each** Participant which has executed **and** delivered **this** Agreement represents **and warrants** that it **has agreed** to be **bound** by all of the terms, covenants **and** conditions of this Agreement **and has** acted **with all** of the requisite capacity **and** authority **and** the approval of its governing body.

APPENDIX A

NATURAL GAS PROCUREMENT PROGRAM

SERVICE SCHEDULE I

PARTICIPATION PERCENTAGES

Alameda	11.000%
Lodi	16.000
Lompoc	2.000
Palo Alto	5.000
Roseville	16.000
Turlock Irrigation District	50.000

EXECUTION COUNTERPART

IN WITNESS WHEREOF, each Participant has by the signature of its duly authorized representatives shown below, executed and delivered a counterpart of this Agreement.

NORTHERN CALIFORNIA
POWER AGENCY

CITY OF ALAMEDA

By: _____

By: _____

Date: _____

Date: _____

CITY OF LOMPOC

CITY OF PALO ALTO

By: _____

By: _____

By: _____

By: _____

Date: _____

Date: _____

CITY OF ROSEVILLE

TURLOCK IRRIGATION
DISTRICT

By: _____

By: _____

By: _____

By: _____

Date: _____

Date: _____

CITY OF LODI

By: Thomas A. Peterson
Thomas A. Peterson, City Manager

By: Alice M. Reimche
Alice M. Reimche, City Clerk

Date: November 7, 1991

Approved as to form Bob McNatt
Bob McNatt
City Attorney

Date: 11-12-91

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EXECUTION COUNTERPART